IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 8348 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

Madhusinh Juwansinh Parmar

VERSUS

The State of Gujarat & Otrs.

Appearance:

MR MUKESH R SHAH for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

MR SP HASURKAR for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 5

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision : 12/06/2000

C.A.V. JUDGEMENT

1. The present petition is filed by the petitioner for the relief to the effect that the respondents be directed to sanction the pension of the petitioner as per the pension rules of the State Government applicable to

the petitioner. The petitioner had also prayed for the interim relief to the effect that the respondents be directed to deposit the pension of the petitioner from the date of his retirement i.e. 7/12/1988 till today before this court and on such deposit being made, the petitioner be permitted to withdraw the same and also a direction to the effect that the respondents will pay the pension to the petitioner regularly every month. The notice is issued on 15th March, 2000 making the same returnable on 27th March, 2000. At the time of issuing the notice, the court directed that the concerned respondent shall fix the pension and place the calculation on the record about the amount payable to the petitioner. On behalf of the respondents, Mr. Digant Joshi, learned Asst. Government Pleader appearing for Mr. S. P. Hasurkar, learned Addl. Government Pleader filed an Affidavit-in-reply on behalf of respondent No.3 - Executive Engineer, Kadana. Mr. Joshi also placed the calculation on record. However, Mr. Joshi submitted that according to the respondents, the petitioner is not entitled for any pension in view of the resolution No.S/9592/665/38/A dated 30th December, 1996 passed by Narmada and Water Resources Department. A copy of which was also placed on record alongwith the affidavit-in-reply.

2. The learned Advocate, Mr. Mukesh R. Shah, for the petitioner moved a draft amendment which was allowed on 4th of May, 2000. The petitioner has challenged the aforesaid impugned Government Resolution dated 30th of December, 1996 by this draft amendment. It is the case of the petitioner that the resolution is passed by the government without giving an opportunity of hearing to the petitioner and that the same, being in violation of the principles of natural justice, is required to be quashed and set aside by this court. It is submitted on behalf of the petitioner that by the impugned resolution, the services of the petitioner for 1 year and 7 months, i.e. after the petitioner had attained the age of 60 years, is ordered not to be treated for the purpose of pensionable job.

3. The learned Advocate for the petitioner has set out in the draft amendment in para-4A as under :

".....even the present government resolution has been issued with a mala fide intention with a view to take away the rights of the pension of the petitioner as the same has been issued after the judgement of this hon'ble Court dated 18/12/1995 in Special Civil Application No.521 of 1995 by which similarly situated daily wager

Watchman was held to be entitled to retirement benefits such as pension, amount of gratuity, arrears, etc. and the impugned Government Resolution dated 30th December, 1996 has been passed after a period of almost four years of the Ordinance/Government Resolution dated 2/12/1992 by which the petitioner was entitled to the benefit of 1 year and 7 months for the purpose of pensionable job and only with a view to get out of the judgement and order dated 18/12/1995 passed by the Hon'ble Gujarat High Court in Special Civil Application No.521 of 1995......."

4. The learned Advocate for the petitioner has also prayed for a writ of mandamus or any other appropriate writ, direction or order quashing and setting aside the resolution dated 30th December, 1996, which is Annexure-L to the petition.

5. Looking to the facts and circumstances of the case, it is clear that earlier a government resolution was passed dated 2/12/1992 and there is a reference of the said resolution in the present impugned resolution dated 30th December, 1996, at Serial No.4 in the referred resolutions. The learned Advocate appearing for the respondents is not able to justify the passing of the impugned resolution dated 30th December, 1996. More particularly, the learned Advocate for the respondents has no submissions to make defending the impugned resolution on the point of the same being in violation of the principles of natural justice and therefore, without entering into other aspects of the matter, the said resolution is quashed and set aside on this short point and the authorities are directed to consider the case of the petitioner in light of the judgement and order passed in Special Civil Application No.521 of 1995 dated 18/12/1995.

6. If at all the authorities are aggrieved of any judgement and order of this court, the remedy is to challenge such judgement and order in the available higher forum, but the judgement and order of this court cannot be negatived by passing a resolution like the impugned one. The attempt on the part of the government to negative a judgement and order of this court by passing a resolution is required to be viewed very seriously. However, as no personal mala fides are alleged against any individual, such serious view is not taken in this case.

7. The impugned resolution dated 30th December, 1996 is hereby quashed and set aside and the respondents are directed to consider the case of the petitioner in light

of the judgement and order of this Court dated 18th December, 1995 in Special Civil Application No.521 of 1995 (Annexure-J, Page-40 to this petition). The authorities are also directed to consider the case of the petitioner within six weeks from the date of the receipt of the writ of this Court and it is further directed that in case the authorities decide in favour of the petitioner, the petitioner shall be paid the benefits of such decision within eight weeks thereafter. The petition is allowed. Rule is made absolute with no order as to costs.

(R.R. TRIPATHI, J.)

(kamlesh)